

AMENDMENT dated April 5, 2005
Serial No. 09/223,972

REMARKS

Reconsideration of the rejections set forth in the Office Action dated November 5, 2004, is respectfully requested in view of the enclosed Affidavit under 37 CFR 1.131 of inventor R. Alberto Villarica. Currently, claims 1-12 and 14-16 are pending in this application.

Rejection of claims 1-12 and 14-16 over Kannan

Claims 1-12 and 14-16 were rejected under 35 USC 103(a) as unpatentable over Kannan et al. (U.S. Patent No. 6,298,352). This rejection is respectfully traversed in view of the attached declaration of R. Alberto Villarica attesting to an earlier reduction to practice of the claimed invention.

R. Alberto Villarica is an inventor of this application. In the enclosed declaration, Inventor Villarica states that he had conceived and completed the invention, and had implemented the invention in a beta version of software, which formed an early physical embodiment of it. Since Mr. Villarica was in possession of the invention and had reduced the invention to practice before the filing date of the Kannan patent, the Kannan patent does not qualify as prior art to this application under 35 USC 102(a) or 102(e). See MPEP 715. Additionally, the Kannan patent does not qualify as prior art under 35 USC 102(b) since it was not published more than one year before the filing date of this application. Therefore, since the Kannan patent doesn't fall within one of the classes of prior art specified by 35 USC 102, the Kannan patent may not be used in a 103(a) rejection.

Per MPEP 715.04, an affidavit by one joint inventor is sufficient to antedate a reference where the other joint inventor(s) are otherwise unavailable to sign the affidavit. In this instance, the co-inventor Charles Kevin Shank (Inventor Shank) is no longer employed by the assignee.

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When contacted by the undersigned, Inventor Shank initially stated that he would sign the same declaration that was signed by R. Alberto Villarica. That conversation took place by telephone on February 4, 2005.

On the same day, February 4, 2005, a copy of the declaration together with Exhibit A was sent by Express Mail to Inventor Shank's home address. After the initial conversation, and after the declaration was mailed out to Inventor Shank, the undersigned has been unable to contact Inventor Shank. Specifically, the undersigned took the following actions to attempt to contact Inventor Shank:

February 24, 2005	called inventor at work; left message on his voice-mail
March 2, 2005	sent inventor an e-mail requesting him to contact the undersigned
March 3, 2005	sent inventor an e-mail
March 5, 2005	called inventor at work; left message on his voice-mail
March 9, 2005	called inventor at work; left message on his voice-mail
March 23, 2005	called inventor at work; left message on his voice-mail
March 30, 2005	called inventor at work; left message on his voice-mail

Despite these efforts to obtain Inventor Shank's signature on a declaration, the undersigned has been unable to do so. Since Inventor Shank has not responded to five separate phone calls and two e-mails, it is reasonable to conclude that he has decided to refuse to sign the declaration, despite his initial verbal agreement to do so. Accordingly, applicants respectfully request that the affidavit of the one inventor be deemed sufficient pursuant to MPEP 715.04.

Since the attached declaration by Inventor Villarica evidences a completion of the invention by all of the joint inventors, signature by the one inventor is sufficient. Accordingly, since the Kannan patent is not prior art to this application, applicants respectfully request that the

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rejection of the claims over this reference be withdrawn.

Conclusion

In view of foregoing remarks, it is respectfully submitted that the application is now in condition for allowance and an action to this effect is respectfully requested. If there are any questions or concerns regarding the amendments or these remarks, the Examiner is respectfully requested to telephone the undersigned at the telephone number listed below.

If any fees are due in connection with this filing, the Commissioner is hereby authorized to charge payment of the fees associated with this communication or credit any overpayment to Deposit Account No. 502246 (Ref: NN-HU0125).

Respectfully Submitted


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